

HOUSE BILL REPORT

SSB 5288

As Reported by House Committee On:
Juvenile Justice & Family Law

Title: An act relating to juveniles in the custody of law enforcement officers.

Brief Description: Specifying how custodial interrogations of juveniles may be conducted.

Sponsors: Senate Committee on Human Services & Corrections (originally sponsored by Senators McAuliffe, Hargrove, Stevens, Regala, Thibaudeau and Carrell).

Brief History:

Committee Activity:

Juvenile Justice & Family Law: 3/23/05, 3/25/05 [DPA].

**Brief Summary of Substitute Bill
(As Amended by House Committee)**

- Requires law enforcement to make reasonable attempts to notify a child's parent, guardian, or custodian when the child is taken into custody and is being held.
- Requires law enforcement to permit a parent to immediately consult with his or her child upon the parent's request if the child is 15 years of age or younger and the parent makes himself or herself immediately available by phone or in person, unless the child objects or if the parent is a co-defendant or victim.
- Requires law enforcement to advise a juvenile who is in custody of specific rights including the right to remain silent, counsel, and to consult with a parent, guardian or custodian.

HOUSE COMMITTEE ON JUVENILE JUSTICE & FAMILY LAW

Majority Report: Do pass as amended. Signed by 5 members: Representatives Dickerson, Chair; Moeller, Vice Chair; McDonald, Ranking Minority Member; McCune, Assistant Ranking Minority Member; and Roberts.

Minority Report: Do not pass. Signed by 1 member: Representative Lovick.

Staff: Sonja Hallum (786-7092).

Background:

Juveniles who are accused of criminal activity are provided essentially the same constitutional guarantees and procedural safeguards as an adult defendant. One such right guaranteed to a juvenile who is charged with a criminal offense is the privilege against self-incrimination.

Prior to questioning a juvenile who is in custody, law enforcement is required to notify the juvenile of his or her right to remain silent, the fact that anything the juvenile says may be used against him or her, and that he or she has the right to counsel. This is the same notification that must be provided to adults and is commonly referred to as the "Miranda" warning based on the name of a United States Supreme Court case that recognized the right to the notification.

A juvenile may choose to waive his or her right to self-incrimination. Under Washington case law, a court will review decisions to waive the privilege against self-incrimination to determine whether the waiver was knowing and voluntary. The court will look to the circumstances surrounding the waiver and determine if the juvenile understood the rights he or she waived and whether the waiver was voluntary, and not coerced.

Summary of Amended Bill:

When a law enforcement officer takes a child into custody, reasonable attempts must be made to notify a child's parent, guardian, or custodian that the child is in custody and where the child is being held.

When a parent, guardian or custodian requests to consult with the child who is age 15 or younger, and makes himself or herself immediately available by telephone or in person, law enforcement must permit the parent to immediately consult with his or her child, unless the child objects or if the parent is a co-defendant or victim of the juvenile.

Law enforcement must advise a juvenile who is in custody of specific rights including the right to remain silent, anything the juvenile says may be used against him or her, the right to counsel, the right to have counsel appointed if the juvenile cannot afford to hire an attorney, and the right to consult with a parent, guardian or custodian.

Amended Bill Compared to Substitute Bill:

The notification requirement is changed to require that reasonable attempts be made to notify a parent when a juvenile is taken into custody by law enforcement rather than the more specific requirement in the original bill that the officer notify the parents.

The amended bill changes the consultation provisions to require that law enforcement permit a parent to consult with a child only if the child is age 15 or younger. The requirement that the parent make himself or herself immediately available is clarified to state that the parent may be available either by telephone or in person.

The requirement in the original bill that the child be in the presence of the parent in order to object to the consultation is deleted. The amended bill allows a juvenile to object to the consultation without the parent being present.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: This bill was based on an incident in which a parent was denied access to his child who was being interrogated at a police station, even though the parent was at the police station. There are many more situations like this including a 13 year old who was subjected to a two and one-half hour interrogation. In Washington, police are not required to contact parents when a child is taken into custody. The goal of this bill is not to hinder police investigations. The intent is to ensure parents have the right to guide their children and to safeguard the right of the children. Research shows one-third of 11-13 year olds and one-fifth of 14-15 year olds who are interrogated by law enforcement, do not understand the long-term consequences of giving statements. If my child was picked up by police and questioned and I was not notified, I would be angry. It is a parent's responsibility to raise kids. Consent forms are required for field trips, shouldn't a parent be involved when it is something this important? This bill doesn't give parents veto power, it only requires reasonable effort to contact the parent. There is an emotional and spiritual toll that the current law takes on families, as well as a significant financial toll. This will not limit law enforcement's ability to do their job. The bill doesn't solve the problem, but takes a significant step. We are not asking the Legislature to be soft on crime, just right on crime. The present law does not offer any additional protections for victims. Don't water down this bill. It will protect those who have been victims, without railroading children. This bill doesn't require waiting for a judge to throw out a confession. Parents are never a bad thing when it comes to the law.

Testimony Against: There is not a need for this bill. Criminal Rule 3.5 allows a court to decide if a confession was given knowingly and voluntarily. If it wasn't, the court will not allow it to be used. If a child is under eight years of age, the child can't be charged with an offense and if they are between eight and 12, a parent must be present with them. Kids over 12 are allowed to make more choices. This bill will not protect the victims of sexual abuse or domestic violence because they will be put in an unsafe position when a parent comes in to where the juvenile is being questioned. If this bill were in effect police would not have been able to get a confession from the neighbor boy who molested our daughter. The confession allowed both my daughter and the perpetrator to get the treatment they needed. We want to allow the police to do their job and protect little victims. Sex crimes are rising rapidly. It is hard to get evidence in molestation cases and convictions are difficult without confessions. If we have to wait for parents, we could lose evidence such as a breath test. This bill may require police to change the way they do things. Police have a job to do in the community. This bill may have unintended consequences. If we can't talk to a child, we can't prevent tragedies like what happened in Minnesota. We probably couldn't have solved the Rachael Burkheimer case if we couldn't talk to the juveniles. We support the provision that requires notification to parents, but not the rest of the bill. If you don't have a first time to get a

juvenile into the system, they can't get treatment and get help. Having parents in the room has a chilling effect.

Persons Testifying: (In support) Senator McAuliffe, prime sponsor; Pastor Paul Stoot, Sr., and Tammie L. Stoot, Greater Trinity Church; Pastor Kenneth S. Ransfer, Greater Mt. Baker Baptist Church; V. Wayne Elliott; Dr. Ken Hutcherson, Antioch Bible Church; Reverend Harriet Walden, Mothers for Police Accountability; Pastor Lee Madison, St. John Baptist Church; and Pastor Ricky Willis, True Vine of Holiness.

(Opposed) Fred Wist, Chief, Juvenile Division, Pierce County Prosecuting Attorney's Office; Martha Wild King; Tim Smith; Grant Romaine, Poulsbo Police Department; Scott Anderson, Bainbridge Island Police Department; Bob Day, Bainbridge Island Police Department; James McMahan, Washington Association of Sheriffs and Police Chiefs; and Steve Boyer, Kitsap County Sheriff.

Persons Signed In To Testify But Not Testifying: More than 20 persons signed in. Please see committee staff for information.